

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.27 of 2007.

Reserved On_3rd September, 2007.

Date of Decision : October, 9 2007.

Hari Singh.

...Appellant.

Versus:

State of H.P.

...Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?¹

For the appellant: Mr.Rakesh Jaswal, Advocate.

For Respondent. Mr.Ashok Chaudhary, Addl.
Advocate General.

Sanjay Karol,J .

The present appeal arises out of the judgment dated 25th November, 2006 passed by Addl. Sessions Judge-I, Kangra in Sessions Case No.17/D/2004 titled as State of Himachal Pradesh Vs. Hari Singh, whereby the accused-appellant herein has been charged and convicted for an offence under Section 307 I.P.C. and sentenced to undergo rigorous imprisonment for five years and fine of Rs. 10,000/- failing which to further undergo simple imprisonment for a period of 1 ½ years .

¹ Whether reporters of Local Papers may be allowed to see the judgment?

On 19.11.2003 at about 10.45 p.m., the matter was reported to the Police vide D.D. entry No.38 by Suresh Kumar, Pradhan, Gram Panchayat, Murdaja that Partap Chand son of Shri Dinju Ram resident of village and Post office, Sukkar had been beaten up by his brother Hari Singh, who had been brought to the Zonal Hospital, Dharamshala. H.C. Anil Kumar (PW-14) was directed to proceed to the Zonal Hospital for further investigation. After reaching at the Zonal Hospital, Dharamshala, Head Constable PW-14 along with other police officials moved an application (Ext.PW-2/C) before the Medical Officer for medical examination of injured Partap Chand (PW-4). The doctor certified that the injured was not in a position to give the statement, therefore, he recorded the statement of Smt. Sandala Devi (PW-3) wife of injured Partap Chand. Her statement under Section 154 Cr.P.C (Ext.PW-3/A) was recorded. The said statement was sent to Police Station, Dharamshala for registering the case through Constable M.H.C. Shashi Kumar and on the basis of which F.I.R.No.231 of 2003 (Ext. PW-10/A) dated 19th November, 2003 under Sections 451,323 and 324 I.P.C. was registered. The statements of Kewal Kumar (PW-5) and Sanju Kumar (PW-6) (Ext.PW-14/A) and (Ext. PW-14/B) respectively were also recorded.

On 20th November, 2003. PW-14 visited the site and prepared site plan (Ext.PW-14/C) and collected blood stained soil and controlled sample of soil from the spot. The blood stained clothes of the injured were taken into possession vide Ext.PW-3/B. On 30th November, 2003, the weapon with which the injury was inflicted i.e. Darat (Ext.P-3) was produced by the accused himself and was taken into possession vide memo Ext. PW-3/G in the presence of the witnesses. Medical records of the injured i.e. X-Ray (Ext.PW-1/B), discharge card (Ext.PW-2/A) and

M.L.C. (Ext.PW-2/B) were also taken into possession. The statement of Partap Chand (Ext.PW-14/D) was also recorded. Subsequently, the report of F.S.L. (Ext.PA) was also obtained and the challan was presented before the Court.

The case of the prosecution is that the accused and Partap Chand (PW-4) are real brothers and having houses opposite to each other. On 19th November, 2003, PW-4 was talking with his family members in his house at about 8.45 p.m. when the accused entered into the court yard and started talking loudly and abusing (PW-4), when PW-4 stepped out of his house into his court yard and requested the accused not to do the same. At that time, the accused, who was carrying a Darat (sharp edged weapon) in his hand, gave a blow on the head of his brother PW-4 who suffered an injury on the left side of his head between the eye and the ear and the blood started oozing out from the same. In the meantime, PW-3 wife of PW-4 along with daughter Sapna (PW-8) came out from the house and raised hue and cry. On hearing the cries, Kewal Kumar (PW-5) and Sanju Kumar (PW-6) also came at the spot and took the injured (PW-4) along with PW-3 to the Zonal Hospital, Dharamshala where he was medically examined and the investigation was carried out after recording of F.I.R.No 231 of 2003 dated 19.11.2003 (Ext.PW-10/A).

After completion of the investigation, challan was presented in the Court after committal. The provisions of Section 207 Cr.P.C. were complied and the charges against the accused under Sections 323, 307 and 451 of the Indian Penal Code were framed. The accused pleaded not guilty and consequently the matter was put to trial.

The learned counsel for the appellant has argued as under:

There is a contradiction between the statements of the witnesses as to whether the injured was unconscious or not. Whereas Dr. Anuradha Chaudhary (PW-2), who treated the injured has stated that the injured was conscious when he was examined in the hospital, PW-4 has stated that upon receiving the blow he was injured and became unconscious. This is also corroborated by PW-3. The contradiction is material as the injury allegedly inflicted by the accused with a weapon finds missing in the D.D. Report which was registered prior to recording of the statement under Section 154 Cr.P.C (Ext.PW-3/A). There are improvements in the statement of the witnesses. As per PW-4 none was present at the time when the accused had hit him with the Darat, therefore, the statement of PW-3 being Ext.PW-3/A that the accused had hit the injured with a Darat is incorrect and an improvement. There are contradictions in the statements of PWs-3 and 4. From the statement of PW-3 it has come on record that there was animosity between her and the accused, therefore, he has been falsely implicated in the case; there is delay in recording the statement of the injured under Section 161 Cr.P.C; the prosecution has failed to prove the case beyond reasonable doubt inasmuch another hypothesis and theory stands proved through the statements of PWs.2,3,4,8 and 9. PW-4 under the influence of liquor may have suffered injury by falling on sharp edged boulder in his courtyard as he has admitted that both the accused and the injured, who are real brothers and working together on the same job had consumed liquor with some other persons. The investigation does not reveal that there was blood on the weapon of offence or that blood found at the site matched with the blood of PW-4; there are major improvements in the statements of the witnesses on whose testimony the accused has been held guilty for

the charged offence. Their statements have to be very carefully scrutinized keeping in view the fact that there is hypothesis of the innocence of the accused; none of the independent witnesses have supported the version of the prosecution; the accused did not flee from the place of incident as is evident from the statement of PW-5.

In all, the prosecution has examined fourteen witnesses. Dr.J.R.Azad (PW-1) and Dr. Anuradha Chaudhary (PW-2) have medically examined PW-4. PW-3 is the wife of injured PW-4. PW-8 is the daughter of PWs.3 and 4 and Ritta (PW-9) is the niece of PW-4 and the accused. Kewal Kumar (PW-5) and Sanju Kumar (PW-6) are independent witnesses but have turned hostile. Suresh Kumar (PW-13) is the witness in whose presence the accused voluntarily handed over the weapon of offence. H.C. Anil Kumar (PW-14) is the Investigating Officer who carried out the investigation. PWs-7, 10 and 12 are the formal witnesses.

As per the version of PW-4 on 19th November, 2003 at about 8.45 p.m. while he was talking with his family members in his house, the accused entered into his court yard and started hurling abuses and when he stepped out from his house and requested the accused not to do so, the accused suddenly gave a blow of Darat on his head for which he received injuries and fell down. His wife and daughter came at the spot and raised hue and cry and on hearing their cries Sanju Kumar (PW-6) came on the spot. After giving the blow the accused fled away from the spot and on receiving he became un-conscious and regained consciousness in the hospital at Dharamshala where he was treated by the doctors for 8 to 9 days. The witness has denied the suggestion that he sustained injury by falling on the boulder having sharp edges in his court yard. He admitted that he along with one Prem Chand and the

accused had consumed liquor at the shop of one Jagdish. He has denied the suggestion that the contractor had given money which was to be shared between him, accused and Prem Singh. He has admitted that the accused had also given beatings to his wife PW-3 for which a report had been lodged with the Police. He has denied the suggestion that the accused was falsely implicated due to inimical relations. He has, however, stated that at the time when he was attacked in front of his house, the light was coming from inside the house towards the place of occurrence. He has stated that the accused had been brought up as his son. He identified the weapon of offence i.e. Darat (Ext.P-3) as also his blood stained clothes.

PW-3 Sandala Devi has corroborated the version of PW-4 and has further stated that she along with her daughter PW-8 raised hue and cry when Kewal Kumar (PW-5) and Sanju Kumar (PW-6) came on the spot and the accused after giving the blow of Darat on the head of her husband fled away from the spot. She along with the said witnesses took her husband to the Zonal Hospital, Dharamshala for treatment. She had informed the Punch of the Gram Panchayat about the incident. She has also denied the suggestion that her husband had received injury after falling on the boulders having sharp edges or that no quarrel took place in her presence. She has denied that because of animosity, a false case has been fastened on the accused. She has denied the suggestion that no blow of Darat was given by the accused to her husband. She has also identified the Darat (Ext.P-3).

Sapna (PW-8) has also corroborated the versions of her parents PW-3 and PW-4. She has specifically stated that the accused who was drunk ran away from the site of the incident. She has admitted

that there is a big boulder lying in their court yard having sharp edges but has denied the suggestion that her father received injuries by falling on the same. She has denied the suggestion that no quarrel took place in her presence. She has stated that in spite of the difference between the two families, her father was having love for the accused and, therefore they remained and worked together under the same Contractor. She has denied the suggestion that no blow was given with the Darat to her father by the accused.

Ritta Devi (PW-9) has partly corroborated the statement of the aforesaid witnesses but has stated that she did not know as to how PW-4 had received injury. She has deposed that some people were saying that PW-4 had received injury with a Darat blow and some were saying that he received injury by falling on the stones.

A perusal of the statements of all the five witnesses would show that their version is consistent, clear, cogent, credit, reliable and cannot be doubted at all. In one voice they have stated that the injured had suffered injury and the blood was oozing; the injured was taken to the Hospital; the accused had fled away from the scene of the occurrence; the injured had brought up the accused as his son and the accused had beaten up his elder sister-in-law for which the matter had been reported to the Police. The weapon of offence i.e. Darat has been identified by PW-3 and PW-4. And that the accused hit PW-4 with Darat is testified by PWs.3, 4 and 8.

As per the version of Anil Kumar (PW-14) after visiting the hospital, he got the accused medically examined, took the medical reports, sent rukka for registration of the F.I.R., recorded the statements of the witnesses, collected the blood stained clothes and soil and

completed the investigation. He has deposed that the statement of the injured could not be recorded in the hospital on the day of the incident as the doctor had certified him not fit to give such statement. There is no cross-examination on this point.

PWs. 5 and 6, the independent eye witnesses have turned hostile. However, PW-5 has admitted that when he had taken PW-4 to the hospital, he was unconscious and that they had come to the hospital along with PW-6, Up-Pradhan Suresh Kumar (PW-13) and also PW-3. He has admitted the presence of the accused at the site of the occurrence. PW-6 has stated that he had seen PW-4 in an injured condition and blood was oozing out from the head and PW-3 and PW-8 were weeping.

In my view, there is no delay or due deliberation in recording the statement under Section 154 Cr.P.C. registration of the F.I.R. or recording of the statement of the injured under Section 161 Cr.P.C. F.I.R. (Ext.PW-10/A) shows that the incident took place at about 8.45 p.m. The injured was rushed to the hospital and medically examined at about 10.30 p.m. on 19.11.2003 itself. Immediately on receiving the report, the police party proceeded to the Zonal Hospital and the statement of PW-3 was recorded at 11.35 p.m. and F.I.R. Ext.PW-10/A was got registered at 11.40 P.M.

In this back ground, it is important to deal with the submission of the learned counsel for the appellant that there is inconsistency in the statements of PW-2, PW-3 and PW-4. A careful examination of the statements of PW-2, PW-3 and PW-4, as recorded in vernacular would show that there is no inconsistency. PW-2 has only stated that when she examined PW-4, he was conscious but was having drowsiness. None of the witnesses has said that PW-4 was un-conscious

at the time when he was being medically examined. All the witnesses have said that on receiving the injury PW-4 fell down and became unconscious. The injury was sustained at about 8.45 P.M. and he was medically examined by the doctor at about 10.30 P.M. There is a time gap of approximately 1 ½ hours when the accused may have gained consciousness. In any event, PW-3 and PW-4 have not been cross-examined on this point at all. Therefore, in my view, there are no contradictions in the statements of the said witnesses. I find no merit in the submission of the learned counsel that if PW-4 had fallen down and became unconscious how could PW-3 depose that the accused had inflicted blow with a Darat. It has come on record through the statement of PW-4 that there was sufficient light in the court yard and the place of occurrence was visible from his house. The presence of PW-3 is not disputed by any person. There is no cross-examination at all to this effect. That apart, PW-3 has stated that the accused had inflicted blow on her husband with Darat. Therefore, it also cannot be said that there is an improvement in her statement. Similarly, the absence of all of the detailed particulars in the D.D. entries and also the statement under Section 154 Cr.P.C. is not fatal to the case of the prosecution at all. The particulars necessary for putting the machinery into motion were sufficiently mentioned therein.

Learned counsel for the appellant has emphatically argued that there is hypothesis on record to show the innocence of the accused. There is possibility of PW-4 suffering an injury under the influence of liquor, by falling on the sharp edged boulder in his compound. It has come on record that there is boulder lying in the compound of PW-4. In my view

this fact does not make the case of the prosecution which otherwise stands proved beyond reasonable doubt and suspicion.

(i) The version of the witnesses consistently point the guilt of the accused. Even as per PW-5 and PW-6 injuries were not suffered by falling on the stone. There is clinching evidence on record to show the guilt of the accused in the commission of the crime. It is not disputed by the accused that he was present at the place and time of occurrence of the incident which is also clear from the statement of PW-5. (ii) The conduct of the accused, who is the real brother, is un-natural as he had fled away from the site after the alleged incident and there is no explanation to the same. (iii) Had the PW-4 suffered injury due to fall, the accused would have taken him to the hospital along with other witnesses. The accused had been brought up by PW-4 like his son and they were working together with the same Contractor as stone cutters. (iv) that the injury could not have been inflicted with the Darat is not the defence of the accused nor have the witnesses been cross-examined as such, on this point. From the cross-examination of PW-2, it is clear that the defence of the accused is at variance and to the effect that the injury could have been caused with the implements with which the stones are cut. (v) The doctor has testified injury to have been caused by the Darat. The case put up by the defence is that PW-4, accused, and Prem Singh had consumed liquor some time before the incident. The possibility of the accused, under the influence of liquor, hurling abuses and inflicting blow of Darat cannot be ruled out which could be the reason of his fleeing away from the scene of occurrence. The medical examination of the injured does not, however, reveal that PW-4 was under the influence of liquor and the doctor has not been cross-examined on this point also. Reliance on the statement of

PW-12, in my view, is totally un-founded for the simple reason that she is not the eye witness and even her statement is based on the hearsay evidence.

The plea of animosity and false implication of the accused by PW-3 is also not acceptable. No doubt, they are all close relatives but their testimonies cannot be discarded and dis-believed on this ground alone. Their deposition is unimpeachable and totally reliable. PW-4 in his cross-examination has stated that he had brought up the accused as his son.

An effort has been made to show that there has been delay in recording of the statement of PW-4 under Section 161 Cr.P.C. The incident had occurred on 19th November, 2003 and the statement was recorded on 24th November, 2003. The delay of four days, in my view, is not fatal at all. The statement of PW-3 was promptly recorded on the day of the incident and the investigation was started immediately. PW-14 has stated that the statement of PW-4 could not be recorded on the same day of incident as the doctor had certified him not fit to make a statement.

The accused, admittedly on bail, voluntarily handed over the Darat to the Police on 30th November, 2003. Importantly, the fact that the Darat was handed over by the accused is not disputed by him in his statement recorded under Section 313 Cr.P.C. Both PW.3 and PW-4 have identified the Darat with which the blow was given resulting into injury.

Next, it has been further argued that since no blood samples were found on the Darat, therefore, it cannot be said that PW-4 had suffered injury from the same. This submission is also without any substance. The Darat was himself handed over by the accused on 30th

November, 2003. From the site of incident blood samples were taken and sent for chemical examination and as per the report of the Chemical Examiner (Ext.PA), it is clear that the blood on the clothes of PW-3 is found to be that of injured Partap Chand but, however, the blood soil sample could not be tested due to insufficient quantity. The witnesses, in one voice have stated that PW-4 was profusely bleeding. Under these circumstances, it cannot be said that missing of blood samples is fatal to the case of the prosecution.

In *Anil Rai Vs. State of Bihar* AIR 2001 Supreme Court 3173, the Court has held as under:

“The mere fact that the Court gave the permission to the Public Prosecutor to cross-examine his own witness by declaring him hostile does not completely efface the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence.”

In any case PW-5 and PW-5 are not eye witnesses who have seen the accused giving the blow of Darat.

From the examination of all the witnesses, it is clear that there is nothing adverse in the cross-examination which would make the statement un-reliable and un-worthy of credence. They have unequivocally denied the suggestion of false implication of the accused in the case and have in one voice supported the version of the prosecution. The statements on the whole are true and do inspire confidence.

A perusal of M.L.C. (Ext.PW-2/B) and also the statement of PW-2 show that the accused had suffered the following injuries:

1. Lacerated wound left side forehead extending from the left upper eye brow to the front-parietal region excessive bleeding from the bound size 10 cm x 2cm.
2. Abrasion left side knee joint size 1cm x 2cm reddish in colour.

This witness has deposed that X-ray of the skull shows fracture left frontal bone plain and Ct. head shows depressed fracture on left frontal bone and injury No.1 is grievous in nature. She has deposed that injury is possible with the blow of Darat. She has further, stated that such injury is also possible if person falls on a sharp edged stone but there must be some associated injuries on the body of injured also. It has come on record that after the accused was given blow of Darat he fell down on the floor. That this injury is caused due to the fall is not ruled out. In any case, there is no other associated injury on the body. The statements of the witnesses are totally tallying with the medical evidence on record.

I have gone through the entire material on record, carefully appreciated the evidence and come to the conclusion that the judgment of the trial Court is fully supported by the material on record and in my view, there is no perversity in the same necessitating interference in an appeal against the conviction.

However, learned counsel for the appellant has further submitted that in any event, the sentence of imprisonment is on the higher side and, therefore, keeping in view the relation between the parties as also the fact that the accused has got three daughters and he being the sole bread earner, the sentence be reduced. I see no reason to agree

with the same. It has come on record that the accused had been brought up by PW-4 as his son and he had also given beatings to his sister-in-law (PW-3) for which report was lodged with the police.

For all the aforesaid reasons, the appeal is dismissed.

**(Sanjay Karol),
Judge.**

October 9, 2007(R).